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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re JOHN S., a Person Coming Under the
Juvenile Court Law.

B165938
(Los Angeles County Super. Ct.
No. CK49975)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

THOMAS S.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County.
Patricia Spear, Judge. Affirmed.

Nancy L. Tetreault, under appointment by the Court of Appeal, for Defendant and
Appellant.

Lloyd W. Pellman, County Counsel, and Kim Nemoy, Deputy County Counsel,
for Plaintiff and Respondent.

Appellant Thomas S. (Father) appeals from a disposition order (judgment) in this dependency case returning custody of his son John S. to Benita D. (Mother). Father, a nonoffending non-custodial parent, contends Mother posed a substantial risk of harm to John. We conclude substantial evidence supports the judgment and affirm.

FACTS AND PROCEDURAL BACKGROUND

Mother has four children by three different fathers. Bailey S., born in 1987, and Andrew S., born in 1989, are the children of Stuart S. John S., born in 1995, is the son of Father. Mother had primary physical custody of John by a family law order. Aubry J., born in 1999, is the child of Daniel J.¹ Mother and the four children lived together with Daniel J. In July 2002, the family came to the attention of the Department of Children and Family Services due to domestic violence, drug use, neglect, and Mother's depression. In mid-August 2002, Mother entered into a voluntary family reunification contract (VFRC) with the Department in which she agreed to placement of Bailey, Andrew, and Aubry with the maternal grandmother and John with Father. Mother failed to remain drug free and removed the children from their placements.

The children were detained from Mother by the Department and a petition was filed on August 28, 2002. A detention hearing was held. The dependency court ordered the children detained from Mother's custody and placed Bailey, Andrew, and Aubry with their maternal grandmother. John was placed with Father. Reunification services were ordered for Mother. Mother was ordered to complete a 30-hour parenting class, complete a 6-month outpatient drug treatment program, drug test, attend domestic violence counseling, maintain full time employment, and maintain suitable housing. Mother was awarded visitation. Sibling visitation was ordered.

¹ John is the only child who is a subject of this appeal. Neither Mother nor the other fathers are parties to this appeal.

On December 17, 2002, Mother and Daniel J. pleaded no contest to amended allegations of the petition. Bailey was placed with her father, Stuart S. Andrew and Aubry remained with the maternal grandmother. John remained with Father. On February 10, 2003, following an uncontested disposition hearing, Andrew, Aubry, and Bailey were returned to the custody of Mother and overnight, alternate weekend visits with Mother were ordered for John. On March 25, 2003, following a contested disposition hearing concerning John, the children were declared dependents of the court and placed in Mother's home. Father was awarded liberal visitation. The dependency court stated it could not find by clear and convincing evidence that there was a substantial risk of detriment if John were returned to the custody of Mother. The dependency court further found that it was in John's best interests to be returned to the custody of Mother. The dependency court noted that John was part of a bonded sibling group. The dependency court also noted that Father had interfered with Mother's visitation with John.

Mother had a longtime drug problem. In addition, she initially continued to permit Daniel J. in the home. However, following detention of the children, Mother finally took action to resolve these problems. She completed the parenting class and the drug treatment program. She remained drug free. She visited the children regularly and maintained close telephone contact. Father interfered with Mother's visitation with John and refused to voluntarily attend parenting classes. Mother maintained full-time employment and suitable housing. Mother obtained psychiatric treatment for her depression and took her prescribed medication. All of the children strongly desired to be returned to her custody and to live together.² Daniel J. was no longer in Mother's home. He had been convicted of domestic violence and incarcerated. Mother was resolved to terminate her relationship with Daniel J. and keep him from the children, other than as ordered by the court as to Aubry. Mother obtained a restraining order against Daniel J.

² John wished to be returned to the custody of Mother, but his attorney believed it was premature.

In the seven months between detention and the disposition hearing as to John, Mother had successfully changed the direction of her life.

DISCUSSION

Father contends the dependency court should have ordered John removed from Mother's custody under Welfare and Institutions Code section 361, subdivision (c)³ and placed in Father's custody under section 361.2, subdivision (a). We disagree.

Section 361, subd. (c) provides in pertinent part: "A dependent child may not be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated unless the juvenile court finds clear and convincing evidence of . . . [¶] . . . a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor or would be if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parents' or guardians' physical custody." "When a court orders removal of a child pursuant to Section 361, the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child." (§ 361.2, subd. (a).)

An appellate court reviews a dependency court's disposition order for substantial evidence. (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1137.) "Under the substantial evidence rule, we have no power to pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or determine where the weight of the evidence lies. Rather, we 'accept the evidence most favorable to the order as true and discard the

unfavorable evidence as not having sufficient verity to be accepted by the trier of fact. [Citation.]’ [Citation.] The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the finding or order.” (*Id.* at p. 1135.)

In this case, the evidence is not truly in conflict. Instead, Father argues that Mother’s long history of drug abuse and relapses, domestic violence, psychiatric problems, and neglect of her children have not been sufficiently corrected in merely seven months. Father argues that Mother was a danger to John at the time of the detention, at the time of the jurisdictional findings, and continued to be a danger at the time of John’s disposition hearing. In short, Father requests that we determine that the weight of the evidence lies differently than the dependency court determined. This is not a proper role for the appellate court. The dependency court reviewed Mother’s remarkable progress in resolving the problems that had brought her to the attention of the Department, the children’s strong desires to be reunited with Mother, and the strong sibling bonds, and determined that Mother no longer appeared to be a danger to the children. In making this decision, the dependency court will have noted the age of the children and the children’s access to other adults, such as Father and the maternal grandparents, should Mother resume the behavior that brought her to the Department’s attention. The return of the children to Mother’s custody would be subject to the supervision of the Department. This continued supervision was a reasonable means to protect the children without ordering their removal from Mother’s custody.

Father argues that there is clear and convincing evidence in the record justifying removal of John from the custody of Mother and placement of John with Father. Even were that so, that evidence does not require or mandate removal of John from Mother’s custody as a matter of law. The dependency court found no such clear and convincing evidence justifying removal. Frequently, a record contains evidence justifying different dispositions. It is the job of the dependency court to weigh that evidence and decide on the appropriate disposition.

³ Hereinafter, all statutory references are to the Welfare and Institutions Code.

Since the dependency court's order returning John to the custody of Mother is supported by substantial evidence, we need not address Father's argument that following removal from Mother's custody, John should have been placed in Father's custody.

DISPOSITION

The judgment is affirmed.

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GRIGNON, Acting P. J.

We concur:

ARMSTRONG, J.

MOSK, J.